

is questionable whether USDLA provided the grant to Brockton since the grant was not reported to the IRS on USDLA's Form 990.

- FCC rules require applicants to pay the non-discounted portion of the costs. FCC adopted the Federal-State Joint Board on Universal Service's recommendation to promulgate rules that provided universal support to eligible schools and libraries through a percentage discount system rather than allowing free services or block grants to be used to cover the schools and libraries' costs.¹² FCC explained that "requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively."¹³ In 2003, FCC clarified and codified this restriction, explaining that the rules "require[] that an entity must pay the entire undiscounted portion of any services it receives through the libraries and schools program."¹⁴ After a thorough review of the evidence in this matter, it is clear that Brockton failed to pay its non-discounted portion of service because Achieve provided its services at no-cost to Brockton.
- Brockton argues that it should not be held liable for any program violations because it has complied with FCC requirements and disclosed the use of USDLA grants to SLD.
- SLD has determined that program rule violations have occurred and as a result this appeal is denied in full. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or disbursements of funds were inconsistent with program rules.¹⁵ In particular, FCC rules require USAC to "recover the full amount disbursed for any funding requests in which

¹² *Federal-State Joint Board on Universal Service, Report & Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 9035-36, FCC 97-157, ¶ 492 (1997) ("*Universal Service Order*").

¹³ *Id.*

¹⁴ *Schools & Libraries Universal Service Support Mechanism, Third Report & Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 02-6, FCC 03-323, ¶ 41 (2003) ("*Third Report & Order*"). This Order codified 47 C.F.R. § 54.523, which states "An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts." See also, *Schools & Libraries Universal Service Support Mechanism, Fifth Report and Order and Order*, CC Docket No. 02-6, 19 FCC Rcd 15808, 15831, FCC 04-190, ¶ 68 (2004) ("*Fifth Report and Order*") (clarifying and codifying the requirement that schools and libraries certify that they have secured access to the resources necessary to effectively use the products and services purchased with universal discounts, including the ability to pay the non-discounted portion).

¹⁵ See *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Schools & Libraries Universal Service Support Mechanism, Order on Reconsideration and Fourth Report & Order*, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Rcd 15252 (2004) ("*Schools & Libraries Fourth Report*").

the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of [FCC's] rules and amplified in related Commission orders."¹⁶ Moreover, FCC rules require "that all funds disbursed should be recovered for any funding request in which the beneficiary failed to pay its non-discounted share."¹⁷

- SLD finds that both Achieve and Brockton are responsible for these rule violations because Brockton was not able to conduct a fair and open competitive bidding process based on Achieve's no-cost guarantee and Achieve gained an unfair competitive advantage by guaranteeing USDLA grants designed to cover the applicant's non-discounted portion of costs for Achieve's services.

For appeals that have been denied, partially approved, dismissed or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We also thank you for your continued support, patience and cooperation during this appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Ms. Joy Jackson
Achieve Telecom Network of MA., LLC
40 Shawmut Road, Suite 200
Canton, MA 02021

Ms. Nichole O'Neal
O'Neal Consulting
5701 E. Circle Drive, #380
Cicero, NY 13039

¹⁶ *Schools & Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, ¶ 21 (2004) ("*Fifth Report & Order*").

¹⁷ *Id* at ¶ 24.

Mr. Daniel Vigeant
Brockton Public Schools
David E. Crosby Administrative Building
43 Crescent Street
Brockton, MA 02301

APR 28 2010

Jason M. Gesing
Murphy, Hesse, Toomey & Lehane, LLP
75 Federal Street, Suite 410
Boston, MA 02110

**Schools & Libraries Division****Notification of Commitment Adjustment Letter****Funding Year 2007: 7/01/2007 - 6/30/2008**

September 8, 2008

**Nichole O'Neal
BROCKTON PUBLIC SCHOOL DIST
5701 E. Circle Dr #380
Cicero, NY 13039 4311**

**Re: Form 471 Application Number: 575224
Funding Year: 2007
Applicant's Form Identifier: Brockton-10
Billed Entity Number: 120639
FCC Registration Number: 0011812971
SPIN Name: Achieve Telecom Network of MA, LLC
Service Provider Contact Person: Joy Jackson**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Joy Jackson
Achieve Telecom Network of MA, LLC

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each individual request in your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on your Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a. This number will only be present for "site specific" FRNs.

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 575224**

Funding Request Number:	1590640
Services Ordered:	TELCOMM SERVICES
SPIN:	143026761
Service Provider Name:	Achieve Telecom Network of MA, LLC
Contract Number:	MTM
Billing Account Number:	
Site Identifier:	120639
Original Funding Commitment:	\$774,900.00
Commitment Adjustment Amount:	\$774,900.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$64,575.00
Funds to be Recovered from Applicant:	\$64,575.00
Funding Commitment Adjustment Explanation:	

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The information obtained during the Special Compliance Review indicates that Achieve Telecom (Achieve) has a partnership with USDLA and solicits donations on behalf of USDLA. USDLA then provides grants to applicants to use to pay their non-discount share, which is specifically designated for Achieve funding requests. Achieve's bids to applicants indicate that Achieve markets their service to applicants as a no cost service because Achieve is able to guarantee applicants that they will receive USDLA grants to pay their share for the Achieve funding requests. Achieve is therefore providing applicants with a rebate for the applicant's portion of the cost. Applicants are required to conduct a fair and open competitive bidding process and to pay the non-discount share of the cost of the products and services. It is a violation of program rules for the service provider to waive the applicant's non-discount portion or otherwise not require payment. The applicant's share cannot come directly or indirectly from the applicant's service provider. Applicants may not receive rebates for services or products purchased with universal service discounts from the service provider providing the services. The information obtained shows that Achieve guarantees that the applicants will receive a grant from the USDLA to use to pay the applicant's share for the Achieve funding requests. Because Achieve is able to guarantee this grant, Achieve is providing the applicants with a rebate of the applicant's share of the cost of the services in violation of program rules. Furthermore, Achieve has an unfair competitive advantage based on violating the rule that applicants not receive rebates for services or products purchased with universal service discounts from the service provider providing the services. Both the applicant and the service provider are responsible for these rule violations because the applicant was unable to conduct a fair and open competitive bidding process based on Achieve's no-cost guarantee, and Achieve had an unfair competitive advantage because Achieve guaranteed a no-cost service in violation of the rule that the service provider not provide a rebate to the applicant. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

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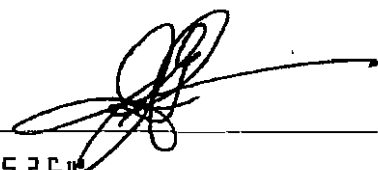
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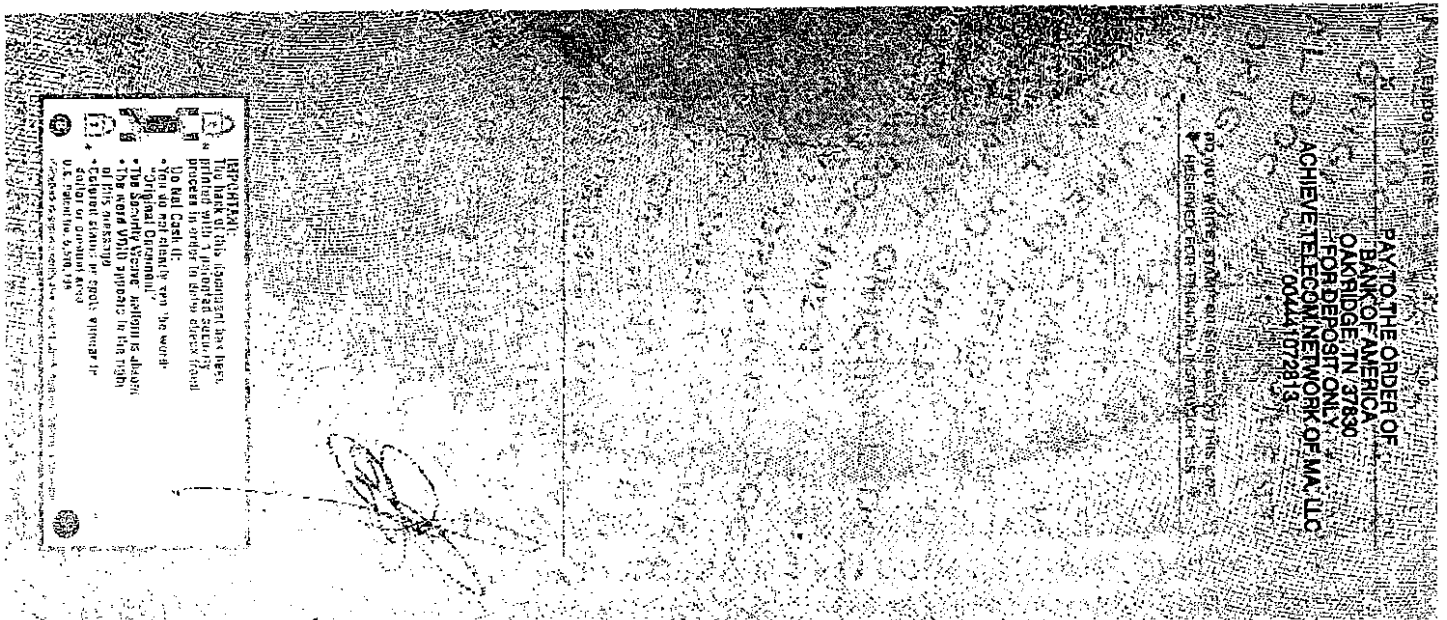
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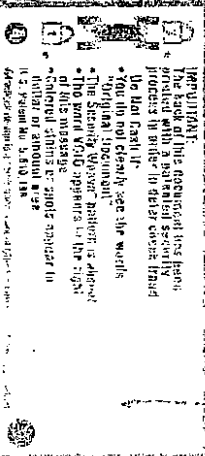
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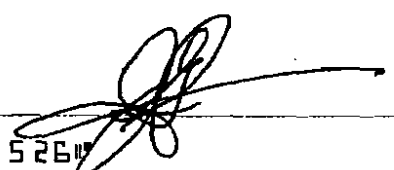
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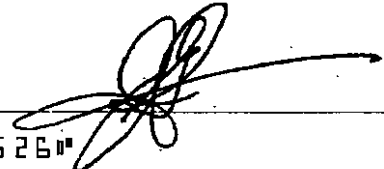
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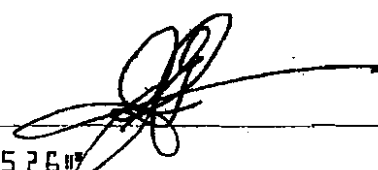
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Step 11: Obligation to Pay Non-discount Portion

Applicants are required to pay the non-discount portion of the cost of the goods and services to their service provider(s).

Service Providers are required to bill applicants for the non-discount portion. The Federal Communications Commission stated that requiring applicants to pay their share would ensure efficiency and accountability in the program:

Requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases they cannot use effectively. A percentage discount also encourages schools and libraries to seek the best pre-discount price and to make informed, knowledgeable choices among their options, thereby building in effective fiscal constraints on the account fund.

Applicants certify that they have complied with this requirement on FCC Forms 470 and 471. On the Form 470, applicants certify as follows in Item 23:

I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

On the Form 471, applicants certify as follows in Item 25:

The eligible schools and libraries listed in Block 4 of this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.

"Secured access" means that you can show that these funds are, or will be, part of your annual budget; or, if you are obtaining the funds from an outside source, that these funds have been promised to you. If you obtain these funds from an outside source, the funds must not come directly or indirectly from your service provider(s).

Some service providers and consultants offer to waive the non-discount portion, or to provide the applicant with a credit or with goods and services equivalent to the non-discount portion. It is a violation of program rules for service providers to waive or credit the applicant's share in any manner. Any special offers to reduce the price must be incorporated into the Form 471 "Total pre-discount amount" so that both the applicant and the Universal Service Fund benefit from such price negotiations. Please see the [Free Services Advisory](#) for additional guidance.

On the Service Provider Annual Certification Form (FCC Form 473), service providers certify in Item 10 that they have billed the applicant for the applicant's non-discount portion:

The Service Provider Invoice Forms that are submitted by this service provider contain requests for universal service support for services which have been billed to the service provider's customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator.

Some service providers offer to help applicants locate grants to pay for their non-discount portion. Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants or organizations are independent of the service provider.

Step 10 Begin Receipt of Services

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Obligation to Pay Non-Discount Portion

Applicants are **required** to pay the non-discount portion of the cost of the goods and services to their service provider(s). Service Providers are **required** to bill applicants for the non-discount portion. The Federal Communications Commission stated that requiring applicants to pay their share would ensure efficiency and accountability in the program:

Requiring schools and libraries to pay a share of the cost should encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases they cannot use effectively. A percentage discount also encourages schools and libraries to seek the best pre-discount price and to make informed, knowledgeable choices among their options, thereby building in effective fiscal constraints on the account fund.

Applicants certify that they have complied with this requirement on FCC Forms 470 and 471. On the Form 470, applicants certify as follows in Item 23:

I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

On the Form 471, applicants certify as follows in Item 25:

The eligible schools and libraries listed in Block 4 of this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.

"Secured access" means that you can show that these funds are, or will be, part of your annual budget; or, if you are obtaining the funds from an outside source, that these funds have been promised to you. If you obtain these funds from an outside source, the funds must not come directly or indirectly from your service provider(s).

Some service providers and consultants offer to waive the non-discount portion, or to provide the applicant with a credit or with goods and services equivalent to the non-discount portion. It is a violation of program rules for service providers to waive or credit the applicant's share in any manner. Any special offers to reduce the price must be incorporated into the Form 471 "Total pre-discount amount" so that both the applicant and the Universal Service Fund benefit from such price negotiations. Please see the Free Services Advisory for additional guidance.

On the Service Provider Annual Certification Form (FCC Form 473), service providers certify in item 10 that they have billed the applicant for the applicant's non-discount portion:

The Service Provider Invoice Forms that are submitted by this service provider contain requests for universal service support for services which have been billed to the service provider's customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator.

Some service providers offer to help applicants locate grants to pay for their non-discount

Some service providers enter to help applicants receive grants to pay for their non-discount portion. Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants or organizations are independent of the service provider. See Free Services Advisory, Example 7.

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